

SENATE BILL 596

By Berke

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 51, relative to the relationship of city and county governments to professional full-time fire fighters.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 7, Chapter 51, is amended by adding Sections 2 through 16 as a new part thereto.

SECTION 2.

(a) This part shall be known and may be cited as the "Professional Fire Department Employees Negotiations Act".

(b)

(1) It is the purpose of this part to prescribe the legitimate rights and obligations of municipalities and their professional employees of the fire department to establish procedures governing relationships between them which are designed to meet the special requirements and needs of municipal fire departments.

(2) Municipalities and their professional fire department employees have an obligation to the public to exert their full and continuing efforts to achieve the highest possible fire safety standards in the municipality which they serve. This requires establishment and maintenance of a professional climate and working environment that will attract and retain a highly qualified professional staff and stimulate optimum performance by such staff.

(3) Experience has shown that municipalities and their professional employees can best reach these objectives if each utilizes the ability, experience

and judgment of the other in formulating policies and making decisions that involve terms and conditions of professional service and other matters of mutual concern. It is the purpose and policy of this part, in order to protect the rights of individual employees in their relations with municipalities, and to protect the rights of the municipalities and the public in connection with employer-employee disputes affecting the fire service, to recognize the rights of professional employees of municipalities to form, join and assist professional employee organizations to meet, confer, consult, and negotiate with municipalities over matters relating to terms and conditions of professional service and other matters of mutual concern through representatives of their own choosing, to engage in other activities for the purpose of establishing, maintaining, protecting and improving fire service standards, and to establish procedures which will facilitate and encourage amicable settlements of disputes.

(4) The "terms and conditions of professional service" or "working conditions" of professional employees are those fundamental matters that affect a professional employee financially or the employee's employment relationship with the municipality. While a municipality is not required to agree or concede to any proposal, good faith negotiations of terms and conditions of employment or working conditions of employees shall be undertaken; provided, that no proposal may directly prevent the chief or director of the fire department from transferring professional employees.

(5) Notwithstanding other provisions of this title to the contrary, a chief or director of a fire department shall have the ultimate right to transfer all professional employees. Nothing in this section shall be construed to make transfers or assignments mandatory subjects of negotiations.

(6) Notwithstanding any other provision to the contrary, nothing in subdivisions (b)(4)-(6) shall be construed to prevent a municipality or professional employee organization from engaging the services of qualified individuals for purposes of advice and consultation during the negotiations process. No such individual may directly serve as a negotiator as defined in Section 3.

SECTION 3. As used under this part, unless the context otherwise requires:

(1) "Arbitration" means the process of determination of disputed matters by submission to private unofficial persons selected for a purpose, and in a manner consistent with this part. Arbitration under this part is not governed by title 29, chapter 5;

(2) "Fact-finding" means investigation of an existing dispute by an individual panel, or board with the fact-finder submitting a report to the parties describing the issues involved. The report may contain recommendations for settlement and may be made public after the parties to the dispute have had an opportunity to study it;

(3) "Management personnel" means the chief or director of a fire department requested by a municipality to represent it in the negotiating process;

(4) "Mediation" means that process by which an impartial third party assists in reconciling a dispute regarding compensation, benefits, duties and other terms and conditions of employment and service between representatives of the municipality and the recognized professional employees' organization through interpretation, suggestion and advice;

(5) "Memorandum of agreement" means a written memorandum of understanding arrived at by the representatives of the municipality and a recognized professional employees' organization on or after the effective date of this part, which is subsequently presented to the municipality and to the membership of such organization

for ratification or rejection. The provisions of this part do not apply to any such memorandum of understanding arrived at prior to the effective date of this part;

(6) "Municipality" or "local municipality" means any city or county having jurisdiction over a paid fire department;

(7) "Negotiating unit" means the entire fire department of a municipality which employs professional employees as defined by subdivision (12);

(8) "Negotiations" means that process whereby the chief executive of a municipality or such representatives as it may designate, and representatives of a recognized professional employees' organization meet at reasonable times and confer, consult, discuss, exchange information, opinions and proposals, in a good faith endeavor to reach agreement on matters within the scope of discussions, and incorporate such agreements into a written agreement;

(9) "Negotiator" means the person or persons selected by the municipality and the person or persons selected by the professional employees' organization to do the negotiating;

(10) "Paid fire department" means a municipal fire department in which ten (10) or more full-time professional employees are paid to work;

(11) "Person" includes one (1) or more individuals, organizations, associations or their representatives;

(12) "Professional employee" means any person employed as a firefighter by a fire department of a municipality or any person designated as fire service personnel by a fire department of a municipality;

(13) "Professional employees' organization" means any organization with membership open to professional employees, as defined in subdivision (12), in which such employees participate and which exists for the purpose, in whole or in part, of

dealing with municipalities concerning, but not limited to, grievances, wages, hours of employment, or other conditions of employment. Such organizations may establish reasonable rules and regulations for conducting business, including provisions for the dismissal of individuals from membership. Such organization shall be limited to a professional employees' organization which only represents fire fighters and other fire service personnel employed by a fire department;

(14) "Representative" includes any person, or group of persons, organization or association who is designated and authorized by the respective negotiating unit or local municipality to negotiate and act for it under this part; and

(15) "Strike" means the failure with others to report for duty, the willful absence from one's position, the stoppage of work or the abstinence in whole or part from the full, faithful and proper performance of the duties of employment, and without the lawful approval of one's superior, or in any manner interfering with the operation of the paid fire department, for the purpose of inducing or coercing the recognition of any employee organization or change in the conditions or compensation or the rights, privileges or obligations of employment.

SECTION 4. Professional employees have the right to self-organization, to form, join or be assisted by organizations, to negotiate through representatives of their own choosing, and to engage in other concerted activities for the purpose of professional negotiations or other mutual aid or protection; provided, that employees also have the right to refrain from any or all such activities.

SECTION 5.

(a) Those rights and responsibilities of municipalities and professional employees as contained in this title are not statutorily modified or repealed by this part.

(b) This part shall not operate so as to annul, modify or preclude the renewal or continuation of any recognition heretofore entered into between a municipality and a professional employees' organization. Upon the termination of an existing agreement, subsequent professional employees' organization recognition shall be governed under this part, provided, that the time schedule established in Section 6 shall not be applicable and recognition with all accompanying rights shall become available immediately upon the completion of the other required recognition procedures.

#### SECTION 6.

(a) Upon the submission by one (1) or more professional employees' organizations to the appropriate local municipality, of a request for recognition together with signed petition cards which constitute thirty percent (30%) plus one (1) of the professional employees, the municipality and the requesting employees' organization shall appoint persons to serve on a special election committee for the purpose of conducting an election as provided in subsection (b).

(b)

(1) In the event one (1) or more professional employees' organizations submit a request for recognition as provided in subsection (a), a special secret ballot election shall be conducted among the eligible professional employees to determine which requesting organization, if any, shall represent such employees.

(2) A special election committee shall be formulated to set the date, establish the times and places, establish the procedure and supervise the election process, supervise the counting of ballots and file the results with the local municipality and the requesting professional employees' organizations.

(A) The election committee shall be composed of one (1) person selected by each professional employees' organization which has filed

with the municipality a request for recognition as provided in subsection (a), plus an equal number of persons selected by the municipality.

(B) The requesting professional employees' organizations and the municipality shall select the persons to serve on this election committee and shall notify the other parties of such selection within fifteen (15) days of being notified by the professional employees' organization.

(C) These persons so selected shall select an additional person to serve as chair.

(D) In the event any party has not named such election committee persons or a majority agreement cannot be reached upon the person to serve as chair within twenty (20) days of being notified by the professional employees' organization, upon request of any of the selected persons to serve on this committee, the chairperson of the Tennessee commission on firefighting personnel standards and education shall within five (5) calendar days name those persons which otherwise should have been named.

(E) The election committee may, upon majority approval, appoint other persons to assist in conducting the election. Motions before the election committee shall require a majority vote of the membership of the full committee.

(F) The election committee person or persons appointed to assist in conducting elections pursuant to this section shall not be compensated for this service.

(3) Voting places and times selected by the election committee shall be convenient and accessible for all eligible professional employees.

(4) A majority vote of those voting shall be required to secure representation by a professional employees' organization. Such secret ballot shall provide for a person to vote for no representation by any professional employee organization.

(5) If a majority vote is not secured, a second election shall be held between those organizations or nonorganizations receiving the first and second largest number of votes.

(6) The secret ballot election shall be held and the results transmitted to the municipality and the respective professional employees' organizations.

(7) The professional employees' organization receiving a majority vote shall be designated as exclusive representative.

(c) The initial recognition shall be for twenty-four (24) months and shall be automatically extended for additional twenty-four month periods, unless between October 1 and October 15 of the second twelve (12) months of any recognition period:

(1) The municipality challenges and substantiates that the recognized organization does not, in fact, possess a majority of the professional employees as paid members; or

(2) Another professional employees' organization files application for recognition with the municipality, together with signed petition cards which constitute a majority of the professional employees. In such event, an election between the competing organizations shall be held according to subsection (b).

(d) When a professional employees' organization has met the requirement of recognition in this section as the exclusively recognized organization, the municipality and such organization shall, in good faith, enter into negotiations, and if agreement is

reached, enter into a memorandum of agreement based upon such negotiations and comply with such agreement according to this part.

(e) It is a violation of this part for any person to use such a memorandum of agreement to force a municipality to increase taxes in order to comply with any negotiated terms contained within such agreement.

(f)

(1) Any professional employee's organization that has met the requirements under § 7-51-204, shall be deemed as the recognized organization for the purposes of this part and the requirement of an election shall be waived.

(2) Any other professional organization seeking recognition under this part shall be responsible for reasonable costs associated with the election under this section.

SECTION 7. A professional employees' organization recognized pursuant to this part shall be the exclusive representative of all the professional employees employed by that fire department for the purpose of negotiating. A challenge to recognition may be made only by the municipality or another professional employees' organization as provided in Section 6.

SECTION 8.

(a) When the municipality and the recognized professional employees' organization are presented with petitions bearing the signatures of a majority of the professional employees in the negotiating unit indicating they no longer desire to be represented by the recognized organization, an election committee shall be established in accordance with Section 6, and the election committee shall conduct a decertification election by secret ballot in which all professional employees in the negotiating unit will have the choice of voting either for the continuation of recognition or for decertification of the recognized professional employees' organization.

(b) If a majority in the negotiating unit votes for decertification, the committee shall thereupon notify the municipality and the recognized professional employees' organization that the organization is no longer the recognized representative.

(c) Those persons requesting a decertification election shall be assessed by the chair of the election committee an amount adequate to pay for conducting the election.

(d) The terms and conditions of any existing memorandum of agreement shall continue in existence for the terms of the memorandum, except that reference to the recognized professional employees' organization shall mean the individual employee.

(e) The municipality shall not be required to negotiate with any subsequently recognized professional employees' organization for the remaining period of the existing memorandum of agreement, but shall negotiate at the appropriate time as set forth herein with a subsequently recognized professional employees' organization for a future period.

#### SECTION 9.

(a) Upon request, management personnel shall represent the municipality in all negotiation activities.

(b) Management personnel shall not be eligible to represent the recognized professional employees' organization, to vote on whether to accept or reject items to be negotiated, or items that have been negotiated, or to derive benefits from the negotiation efforts, except those benefits which go to all professional employees of the fire department.

#### SECTION 10.

(a) It is a violation of this part for a municipality or its designated representative to:

(1) Impose or threaten to impose reprisals on professional employees, or discriminate against professional employees by reason of their exercise of rights guaranteed by this part;

(2) Interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 5;

(3) Refuse or fail to negotiate in good faith or execute a written memorandum incorporating any agreements reached with representatives of a recognized professional employees' organization as provided in this part;

(4) Refuse to permit a professional employees' organization to have access at reasonable times to areas in which professional employees work, use institutional bulletin boards, mailboxes, or other communication media, or use institutional facilities at reasonable times for the purpose of holding a meeting concerned with the exercise of the rights guaranteed by this part; provided, that if a representative has been selected or designated pursuant to this part, a municipality may deny such access or usage to any professional employees' organization other than the representative until such time as a lawful challenge to the majority status of the representative is sustained pursuant to this part;

(5) Encourage or discourage membership in any organization by discrimination in hiring, or other terms or conditions of employment; provided, that the municipality or its designated representative may express any views, arguments or opinions on the subject of employer-employee relations; provided, that such expression contains no threat of reprimand, discharge, or promise of benefits;

(6) Discharge or discriminate against an employee because the employee has filed an affidavit, petition or complaint, or given any information or testimony under this part;

(7) Dominate, interfere or assist in the administration of any professional employees' organization; or

(8) Refuse to in good faith mediate, arbitrate or participate in fact-finding efforts pursuant to this part.

(b) It is a violation of this part for a recognized professional employees' organization or its representatives to:

(1) Cause or attempt to cause a municipality to engage in conduct in violation of this part; provided, that this subdivision (b)(1) shall not be construed to impair the right of a professional employees' organization to prescribe its own rules with respect to operation involving the acquisition or retention of membership;

(2) Refuse or fail to negotiate in good faith with municipalities, or execute a written contract incorporating any agreements reached;

(3) Interfere with, restrain or coerce professional employees or a municipality in the exercise of rights granted in this part;

(4) Refuse to in good faith mediate, arbitrate or participate in fact-finding efforts pursuant to this part;

(5) Engage in a strike;

(6) Urge, coerce or encourage others to engage in unlawful acts as defined in this part; or

(7) Enter onto fire department property for the purpose of contacting professional employees in such a manner and at such times as will interfere with

the normal operations of the fire department, except that agreement may be reached in any memorandum of agreement for grievance investigations and process by the recognized professional employees' organization.

(c)

(1) A complaint of a violation of this part must be filed in the chancery court of the county where the professional employees' organization is seeking or has attained recognition.

(2) No complaint shall issue based upon any such violation occurring more than six (6) months prior to the filing of the complaint.

(3) The chancery court is empowered to prevent any municipality or its agents, or organizations, associations, or their agents, from engaging in any act declared to be a violation of this part.

(4) If, upon the preponderance of the evidence taken, the court is of the opinion that a party named in the complaint has engaged in or is engaging in any such violation, then the court shall state its findings of fact, issue an order requiring such party to cease and desist from such violation, and take such affirmative action, including resumption of negotiations, reinstatement of employees with or without back pay, or execution of a contract the terms of which have been agreed upon, as well as to effectuate the policies of this part. Such order may further require such party to make reports from time to time showing the extent to which it has complied with the order.

(5) If, upon the preponderance of the evidence taken, the chancery court is not of the opinion that a party named in the complaint has engaged in or is engaging in any such violation, then the chancery court shall state its findings of fact and shall issue an order dismissing the complaint.

SECTION 11.

(a)

(1) If a strike occurs, the municipality may apply to the chancery court in the county to enjoin such strike. The application shall set forth the facts constituting the strike.

(2) If the court finds, after a hearing, that a strike has occurred, the court may enjoin the employees from participating in such strike.

(b) When local municipalities have determined which employees have engaged in or participated in a strike, such employees may be subject to dismissal or other forms of disciplinary action.

(c) No penalty, forfeiture of rights or privileges, or other sanction or fine imposed on a professional employees' organization, its officers or members, as the result of a strike, shall be negotiable by such organization and a municipality at any time.

SECTION 12.

(a) The municipality and the recognized professional employees' organization shall negotiate in good faith the following conditions of employment:

(1) Salaries or wages;

(2) Grievance procedures;

(3) Insurance;

(4) Pensions and fringe benefits;

(5) Working conditions;

(6) Leave;

(7) Payroll deductions; provided that payroll deductions established pursuant to § 7-51-204 for payment of dues shall not be considered a condition of employment for purposes of this subsection (a); and

(8) Other conditions of employment.

(b) Nothing in this section shall be construed to mandate or require a municipality negotiating under this part to enter into an agreement on the conditions of employment set forth in subsection (a). Any such agreement shall be entered into voluntarily by the municipality and the recognized professional employee's organization.

(c) Nothing shall prohibit the parties from agreeing to discuss other terms and conditions of employment in service, but it is not bad faith, as set forth in this part, to refuse to negotiate on any other terms and conditions. Either party may file a complaint in a court of record of any demands to meet on other terms and conditions and have an order of the court requiring the other party to continue to meet in good faith on the required items of this section only. Any negotiations under this part shall be meetings within title 8, chapter 44.

SECTION 13. Negotiations between the municipality and the professional employee's organization shall be conducted by existing personnel during normal business hours. Nothing in this section shall be construed to mandate or require a municipality to expend funds to hire additional personnel, contract with outside counsel or consultants, nor to require the payment of overtime to existing personnel in the negotiation process set forth by this part. Any such expenditure shall be entered into voluntarily by the municipality and is not mandated or required by this part.

SECTION 14.

(a) The scope of a memorandum of agreement shall extend to all matters negotiated between the municipality and the professional employees' organization; provided, that the scope of such agreement shall not include proposals contrary to:

(1) Federal or state law;

(2) Professional employee rights defined in this part; or

(3) Municipal rights contained in this title.

(b) When agreement is reached by the representative of the municipality and the recognized professional employees' organization, they shall jointly prepare a memorandum of understanding, and, within fourteen (14) calendar days, present it to their appropriate governing authorities for ratification or rejection. These governing authorities, as soon as practical, shall consider the memorandum and take appropriate action. If either governing authority rejects or modifies any part of a proposed memorandum, the matter shall be returned to the parties for further negotiation. The municipality may enter into such memorandum for a period not in excess of three (3) years.

(c) A municipality and a recognized professional employees' organization that enter into an agreement covering terms and conditions of professional service or other matters of mutual concern may include in such agreement procedures for final and binding arbitration of such disputes as may arise involving the interpretation, application or violation of such agreement.

#### SECTION 15.

(a) Following reasonable efforts to reach agreement, either the municipality or the recognized professional employees' organization may, upon written notification to the other, request the services of the federal mediation and conciliation service. If such service is not available at a time agreeable to the requesting party, a mediator shall be selected by a three-member panel consisting of one (1) person selected by the municipality, one (1) person selected by the recognized professional employees' organization and one (1) person to serve as chair selected by these two (2) persons. The mediator shall immediately meet with the parties or their representatives, or both, either jointly or separately and shall take such other steps as the mediator may deem

appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement. The mediator shall not, without the consent of both parties, make findings of fact or recommend terms of settlement. The cost of the services of the mediator appointed by the panel shall be paid for by the party requesting the services.

(b) If the mediator is unable to bring the parties to agreement, either party may, by written notification to the other, request that their differences be submitted to fact-finding and advisory arbitration. Either party may request the American Arbitration Association or the Federal Mediation and Conciliation Service to designate an arbitrator. The arbitrator so designated shall not, without the consent of the parties, be the same person who was appointed mediator pursuant to subsection (a). Any items negotiated by a municipality and the recognized professional employees' organization which require funding shall not be considered binding until such time as the body empowered to appropriate the funds has approved such appropriation. In the event the amount of funds appropriated is less than the amount negotiated, the municipality or its representatives and the recognized professional employees' organization or its representatives shall renegotiate an agreement within the amount of funds appropriated.

(c) The arbitrator shall meet with the parties or their representatives, or both, either jointly or separately, make inquiries and investigations, hold hearings, and shall take such other steps as the arbitrator deems appropriate. For the purpose of such hearings, investigations and inquiries, the arbitrator shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. The several departments, commissions, divisions, authorities, boards, bureaus, agencies and officers of the municipality or any political subdivisions or agency thereof, shall furnish the arbitrator, upon the arbitrator's request, all records, papers and

information in their possession relating to any matter under investigation by or in issue before the arbitrator. If the dispute is not settled prior thereto, the arbitrator shall make findings of fact and recommend terms of settlement, which recommendations shall be advisory only, and shall be made within thirty (30) calendar days after the arbitrator's appointment. Any findings of fact or recommended terms of settlement shall be submitted in writing to the parties. The arbitrator has the discretion to make such findings and recommendations public, and either the municipality or the professional employees' representative may make such findings and recommendations public if no agreement is reached within ten (10) calendar days after their receipt from the arbitrator. Upon completion of the processes of mediation and fact-finding and advisory arbitration, this part stipulates no additional recourses or action. The costs for the services of the arbitrator shall be borne by the party requesting the arbitrator.

SECTION 16. Nothing in this act shall be construed to violate title 50, chapter 1, part 2 or any other right to work laws of this state only to the extent of such conflict.

SECTION 17. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 18. This act shall take effect upon becoming law, the public welfare requiring it.